IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4913 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No

2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

RABARI MURU ARJAN

Versus

STATE OF GUJARAT

Appearance:

MS JAYSHREE C BHATT for Petitioner

Ms.S.S.Talati, A.G.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA
Date of decision: 02/12/98

ORAL JUDGEMENT

1. This writ petition under Article 226 of the Constitution of India has been filed seeking writ of certiorari for quashing the detention order dated 11th February 1998 passed by the Detaining Authority under Section 3(2) of the Prevention of Anti-Social Activities Act, 1985 (for short "PASA Act") and in the nature of habeas corpus for immediate release of the petitioner from illegal detention.

2. Brief facts are that the Sponsoring Authority, D.I.G. Police, Junagadh, submitted a report to the detaining Authority, District Magistrate, Junagadh, complaining of anti-social activities of the petitioner as bootlegger and also complaining that he is a dangerous person and requested for taking action under the PASA Act. After examining the material on record including reference of cases registered against the petitioner under the Prohibition Act as well as under the Indian Penal Code and further considering the statements of five witnesses the impugned order of detention was passed. Grounds of detention were furnished to the petitioner. Petitioner has challenged this order in this writ petition only on one ground that the so called prejudicial activities of the petitioner are not prejudicial to maintenance of public order and at the most the complained activities can be said to be disturbing law and order for which preventive detention was not justified. Distinction between law and order and public order was high lighted in the course of arguments which need not be repeated inasmuch as it is by now settled that there is distinction between law and order and public order. Whenever some offence is committed there is likelihood of disturbance of law and order, but for that the citizen can not be placed under preventive detention. It is only when the activities complained of cause disturbance or are likely to disturb even tempo of the life of the locality, peace and tranquality of the residents of that locality that it can be said that situation which is likely to cause disturbance of public order has arisen. Stray incidents do not constitute disturbance of public order. Even serious incident of looting inside the house of the victim was not considered to be a situation prejudicial to maintenance of public order. The case of Smt. Tarannum v/s. Union of India, reported in JT 1998 (1) 486 can be referred.

3. After going through the grounds of detention it appears that the detaining Authority was very much impressed with the helplessness of the DIG Police, Junagadh, who was unable to keep control over the activities of the petitioner and came to subjective satisfaction arbitrarily that the petitioner is a dangerous person and is also a bootlegger whose anti-social activities have disturbed the public peace in the locality. If english translation of the detention order furnished by the learned Counsel of the petitioner is correct then the detaining Authority was satisfied that the activities of the petitioner did not disturb the public order, but were obstructing in maintenance of public peace. Needless to emphasis that maintenance of public peace cannot be equated with maintenance of public order. Breach of public peace in every case does not amount to disturbance of public order. There are adequate safeguards in the Code of Criminal Procedure to prevent breach of peace and for this action under Sections 107/116 Cr.P.C. can be taken so also under Section 151 Cr.P.C.

4. Subjective satisfaction reached by the detaining Authority seems to be mechanical and arbitrary. It seems from the grounds of detention that the detaining Authority was satisfied in the first instance that the petitioner is a dangerous person. It seems that the detaining Authority did not go through the definition of dangerous person as contained in Section 2(c) of the PASA Act. It is not necessary to reproduce the said definition in this Judgment. It is enough to say that unless person is habitual in committing or attempting to comit offences punishable under Chapter XVI or XVII of the I.P.C. he cannot be termed as dangerous person. From the grounds of detention it appears that seven cases were registered against the petitioner. Six cases were under the Prohibition Act. Only one case is under Section 323, 504, 506(2) and 114 I.P.Code. Investigation is pending in this case. Cases registered under the Prohibition Act cannot be considered for deciding whether the petitioner is a dangerous person or not. Presuming for a moment that the case registered under Section 323, etc. of I.P.Code falls under Chapter XVI of the I.P.C single commission of offence under this section does not amount to repetition of commission of such offence and unless there is repetition of commission of such offence the petitioner cannot be said to be habitual in committing such offence.

5. In Tarannum's case (supra) single incident was not considered to be enough for preventive detention of

the detenu. If the petitioner cannot be termed as dangerous person within the meaning of Section 2(c) of the PASA Act it is difficult to accept and believe how this minor incident u/s. 323 I.P.Code could have the effect of disturbing public order. Thus, subjective satisfaction on this ground is totally mechanical, arbitrary and contrary to Section 2(c) of the PASA.

6. Coming to the next subjective satisfaction the petitioner, in view of six registered cases against him under the Prohibition Act, can be said to be bootlegger, but simply because he is a bootlegger order for his preventive detention cannot be passed merely on the report of the Sponsoring Authority, viz. DIG Police, Junagadh. What is further required is that such activities of the petitioner must be prejudicial to maintenance of public order. Out of six cases mentioned in the grounds of detention and from the details of those cases furnished in the grounds of detention it can hardly be said that in those incidents the activities of the petitioner were prejudicial to maintenance of public order. Simply because the petitioner was enlarged on bail in those cases it cannot be said that his activities were prejudicial to maintenance of public order.

7. Coming to the statements of five witnesses considered by the Detaining Authority, two are rickshaw driver and two are petty shop keepers doing business in betel and Bidi. From the extracts of their statements recorded in the grounds of detention it can be said that in none of these incidents by the activities of the petitioner public order was actually disturbed or was likely to be disturbed. Consequently in the absence of material that the activities of the petitioner were prejudicial to maintenance of public order or had actually disturbed the public order, the detention order cannot be sustained.

8. For the reasons stated above, the impugned order of detention dated 11.2.1998 cannot be sustained. The writ petition, therefore, succeeds and is hereby allowed. The impugned order of detention dated 11.2.1998 (Annexure : B to the petition) is hereby quashed. The petitioner shall be released forthwith unless he is wanted in some other criminal case.

sd/-

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